

CIVIL PROCEDURES

CIVIL PENALTY PROCEDURES (49 U.S.C. 336 (2001)).

(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) The Secretary may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

ORDER OF FEDERAL AGENCIES, REVIEW—THE HOBBS ACT

JURISDICTION OF COURT OF APPEALS. (28 U.S.C. 2342 (2001)). The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

* * *

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839[, and 841a]) or pursuant to part B or C of subtitle IV of title 49; and

(B) the Federal Maritime Commission issued pursuant to—

(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d));

(iv), (v) [Redesignated]

* * *

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

* * *

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

VENUE. (28 U.S.C. 2343 (2001)). The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

REVIEW OF ORDERS; TIME; NOTICE; CONTENTS OF PETITIONS; SERVICE (28 U.S.C. 2344 (2001)).

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

- (1) the nature of the proceedings as to which review is sought;
- (2) the facts on which venue is based;
- (3) the grounds on which relief is sought; and
- (4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

PREHEARING CONFERENCE (28 U.S.C. 2345 (2001)).

The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

CERTIFICATION OF RECORD ON REVIEW (28 U.S.C. 2346 (2001)). Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

PETITIONS TO REVIEW, PROCEEDINGS (28 U.S.C. 2347 (2001)).

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counter evidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

REPRESENTATION IN PROCEEDING; INTERVENTION (28 U.S.C. 2348 (2001)). The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented

by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

JURISDICTION OF THE PROCEEDING (28 U.S.C. 2349 (2001)).

(a) The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

REVIEW IN SUPREME COURT ON CERTIORARI OR CERTIFICATION (28 U.S.C. 2350 (2001)).

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals

in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

ENFORCEMENT OF ORDERS BY DISTRICT COURTS

(28 U.S.C. 2351 (2001)). The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

AMERICAN GREAT LAKES VESSELS¹

SEC. 1521. EXEMPTION OF AMERICAN GREAT LAKES VESSELS FROM RESTRICTIONS ON CARRIAGE OF PREFERENCE CARGOES (46 App. U.S.C. 1241q (2001)).

(a) **Exemption from Restriction.** The restriction described in subsection (b) shall not apply to an American Great Lakes vessel while it is so designated.

(b) **Restriction Described.** The restriction referred to in subsection (a) is the restriction in section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)), that a vessel that is—

- (1) built outside the United States;
- (2) rebuilt outside the United States; or
- (3) documented under any foreign registry;

shall not be a privately owned United States-flag commercial vessel under that section until the vessel is documented under the laws of the United States for a period of 3 years.

(c) **Subsequent Application of Restriction.** Upon the revocation or termination of a designation of a vessel as an American Great Lakes vessel, the restriction described in subsection (b) shall apply as if the vessel had never been a vessel documented under the laws of the United States.

SEC. 1522. DESIGNATION OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241r (2001)).

(a) **In General.** The Secretary shall designate a vessel as an American Great Lakes vessel for purposes of this subtitle if—

- (1) the vessel is documented under the laws of the United States;
- (2) the Secretary receives an application for such designation submitted in accordance with regulations issued by the Secretary under subsection (d);

(3) the owner of the vessel enters into an agreement in accordance with subsection (b);

(4)(A) the vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or

(B) the vessel is not more than 11 years old, and not less than 1 year old on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and

¹ Sections 1521 through 1527 are set forth in Subtitle B of Title XV of Public Law 101-624, approved November 28, 1990 (104 STAT. 3665-3668).

(5) the vessel has not been previously designated as an American Great Lakes vessel.

(b) **Construction and Purchase Agreement.** As a condition of designating a vessel as an American Great Lakes vessel under this section, the Secretary shall require the person who will be the owner of the vessel at the time of that designation to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120 day period following the date of any revocation of such designation under section 1524, an exclusive right to purchase the vessel for a price equal to—

- (1) the approximate world market value of the vessel; or
- (2) the cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel; whichever is greater.

(c) **Certain Foreign Registry and Sale Not Prohibited.** Notwithstanding any other provision of law, if the United States does not purchase a vessel in accordance with its right of purchase under a construction and purchase agreement under subsection (b), the owner of the vessel shall not be prohibited from—

- (1) transferring the vessel to a foreign registry; or
- (2) selling the vessel to a person who is not a citizen of the United States.

(d) **Issuance of Regulations.** Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations establishing requirements for submission of applications for designation of vessels as American Great Lakes vessels under this section.

SEC. 1523. RESTRICTIONS ON OPERATIONS OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241s (2001)).

(a) **In General.** Subject to subsection (b), an American Great Lakes vessel shall not be used—

- (1) to engage in trade—
 - (A) from a port in the United States that is not located on the Great Lakes; or
 - (B) between ports in the United States;
- (2) to carry bulk cargo (as that term is defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702(4)) which is subject to section 901(b) or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) or 1241f), or section 2631 of title 10, United States Code; or
- (3) to provide any service other than ocean freight service—
 - (A) as a contract carrier; or

(B) as a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign commerce of the United States.

(b) Off-Season Carriage Exception.

(1) *In General.* Subject to paragraph (2), an American Great Lakes vessel may be used to engage in trade otherwise prohibited by subsection (a)(1)(A) for not more than 90 days during any 12-month period.

(2) *Limitation.* An American Great Lakes vessel shall not be used during the Great Lakes shipping season to engage in trade referred to in paragraph (1).

SEC. 1524. REVOCATION AND TERMINATION OF DESIGNATION (46 App. U.S.C. 1241t (2001)).

(a) **Revocation.** The Secretary, after notice and an opportunity for a hearing, may revoke the designation of a vessel under section 1522 as an American Great Lakes vessel if the Secretary determines that—

- (1) the vessel does not meet a requirement for such designation;
- (2) the vessel has been operated in violation of this subtitle; or
- (3) the owner or operator of the vessel has violated a construction and purchase agreement under section 1522(b).

(b) **Civil Penalty.** The Secretary, after notice and an opportunity for a hearing, may assess a civil penalty of not more than \$1,000,000 against the owner of an American Great Lakes vessel, for any act for which the designation of that vessel as an American Great Lakes vessel may be revoked under subsection (a).

(c) **Termination of Designation.** The Secretary may terminate the designation of a vessel as an American Great Lakes vessel under this subtitle upon petition and a showing of good cause for that termination by the owner of the vessel. The Secretary may impose conditions or restrictions in a termination order to prevent significant adverse effects on other United States-flag vessel operators.

SEC. 1525. ALLOCATION BASED ON LOWEST LANDED COST (46 App. U.S.C. 1241f(c) (2001)).²

SEC. 1526. STUDY AND REPORT. (46 App. U.S.C. 1241u (2001)).

(a) **Study.** The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study on the implementation of this subtitle.

² Section 1525 amended the Food Security Act of 1985, and does not directly pertain to American Great Lakes vessels. It is codified at Section 901b(c)(3) of the Merchant Marine Act, 1936, at page 112, *supra*.

The study shall include analysis of—

(1) the effects of that implementation on diversions of cargo to and from the Great Lakes port range and any resulting effects on the cost of transporting commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.); and

(2) whether the authority to designate vessels as American Great Lakes vessels has increased United States-flag vessel service to Great Lakes ports.

(b) **Report.** Not later than December 31, 1994, the Secretary shall submit a report to the Congress on the findings of the study under subsection (a).

SEC. 1527. DEFINITIONS (46 App. U.S.C. 1241v (2001)).

As used in this subtitle—

(1) *American Great Lakes Vessel.* The term “American Great Lakes vessel” means a vessel which is so designated by the Secretary in accordance with section 1522.

(2) *Great Lakes.* The term “Great Lakes” means Lake Superior; Lake Michigan; Lake Huron; Lake Erie; Lake Ontario; the Saint Lawrence River west of Saint Regis, New York; and their connecting and tributary waters.

(3) *Great Lakes Shipping Season.* The term “Great Lakes shipping season” means the period of each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.).

(4) *Secretary.* The term “Secretary” means the Secretary of Transportation.